STATE OF MICHIGAN

IN THE SUPREME COURT

IN RE REQUEST FOR ADVISORY OPINION
REGARDING CONSTITUTIONALITY OF 2005 P.A. 71

Supreme Court No. 130589

_____/

MICHIGAN REPUBLICAN PARTY'S AMICUS CURIAE BRIEF

ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

On April 26, 2006, this Court issued an Order inviting the Michigan Republican Party to file a brief as an amicus curiae in this matter. This Court has jurisdiction to issue an advisory opinion under Article III, Section 8 of the Michigan Constitution.

STATEMENT OF QUESTION PRESENTED

DO THE PHOTO IDENTIFICATION REQUIREMENTS OF SECTION 523 OF 2005 P.A. 71, MCL 168.523, ON THEIR FACE, VIOLATE EITHER THE MICHIGAN CONSTITUTION OR THE UNITED STATES CONSTITUTION?

Amicus Curiae Michigan Republican Party answers: No

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Michigan Republican Party (the "MRP") is representative of the will of the Michigan citizenry that supports requiring voters to submit some form of identification in order to vote in Michigan elections. Representing one of two main political parties, the MRP embodies the ideals that elections should be fair, efficient, and bolstered by public confidence. The MRP has an innate interest in election proceedings, not only to ensure the successful election of its candidates, but more importantly to ensure that elections are conducted with the utmost integrity. No properly registered voters – Republicans or Democrats – should be disenfranchised because fraudulent votes are cast.

Integrity and fairness in the electoral process cannot be achieved when perceived or actual voter fraud is present. The MRP supports the view that elections are the primary vehicle by which duly registered voters can enter the political community and exercise their political rights.

The MRP is also interested in this case given the large number of local clerks who administer partisan elections that are adversely impacted by their conundrum of whether to comply with 2005 P.A. 71 or follow the Attorney General's guidance that requiring voter identification does not comply with Michigan or United States Constitutional requirements.

The MRP also understands the importance of election efficiency. The political process does not remain stagnant, but rather is an ever-changing phenomenon. While elections must be meticulously administered, administration must also be efficient. The MRP supports the view that elections must be efficiently conducted in order to maintain strong public confidence.

Public confidence in the political process is essential for the process to remain healthy and vibrant. The MRP realizes that public trust in elections is lost when voter fraud penetrates the

system. The integrity of elections will only deteriorate if voter fraud is not confronted with a swift and decisive response.

The MRP is an entity built upon the idea that politics should maintain the highest level of integrity. Accordingly, the MRP is strongly interested in maintaining elections that are fair, efficient, and full of public confidence.

INTRODUCTION

The photo identification requirement of Section 523 of 2005 P.A. 71, MCL 168.523 (the "Voter ID Law") is an important, common-sense effort to protect the integrity of elections. It merely requires voters to produce one of several common forms of photo identification so that poll workers – whose jobs have come under increasing pressure and scrutiny in recent elections – will have an easier time detecting identity fraud at the polls. The Elections Clause of the United States Constitution and Article II, Section 4 of the Michigan Constitution expressly authorize the Michigan Legislature to regulate the manner of holding federal (and state) elections. The Voter ID Law is nothing more than an exercise of this authority by the State of Michigan. It is not a direct or severe impingement of the right to vote, is not a poll tax, and is not an unequally applied voter qualification. Regardless, Michigan has a compelling interest in preserving the integrity of elections – and in preserving the confidence of the public in the integrity of elections – particularly at a time of increasing accounts of in-person voter fraud here in Michigan. The Voter ID Law is a reasonable, well-targeted means of preserving fair elections, protecting the value of legitimate votes, and safeguarding public confidence in the legitimacy of elections. The Voter ID Law is the public policy of the State of Michigan, as adopted by its elected representatives, as a tool to prevent voter fraud. Each election that goes by without the Voter ID Law serves as a defeat for the will of the people and a victory for the proponents of voter fraud.

STATEMENT OF FACTS

I. Photo Identification Is An Inescapable Fact In Our Society

It cannot be doubted that in today's society, photo identification is a prevalent, useful, and often vital component of life. Simply put, photo identification has become an inevitable fact of American life. John Fund observed that requiring voters to show photo identification at the polls is no different from what most Americans already must do when they "take an airline flight, buy an Amtrak ticket, cash a check, rent a video or check into a hotel." Fund, *Stealing Elections* (San Francisco, Encounter Books 2004), p. 136.

An argument against Michigan's roadside-license-confiscation law emphasized how "the photo driver's license has become the most widely accepted (and, frequently required) form of identification in our society." Norris & Smith, *Photo Finished: Calling Into Question Michigan's Roadside Driver's License Confiscation Law*, 74 Mich. BJ 410, 412 (1995). As the authors explain, "[o]ne deprived of a photo license need only attempt to rent a car or other equipment, cash a check, open a financial account or engaged in a plethora of other common transactions in which photo identification is demanded, to understand how vital the photo driver's license is in our modern society." *Id.*

Exercise of some fundamental constitutional rights often turns on presentation of identification. For example, in order to obtain a marriage license in Michigan, couples must present identification. MCL 551.103. In order to exercise the fundamental right of access to courts, litigants must present photo identification to security officials. Indeed, to enter the Michigan Hall of Justice to view proceedings by this Court, one must present photo identification. Attorneys providing incarcerated criminal defendants with their constitutional right to counsel must show photo identification at the jailhouse door. *See* Norris & Smith, 74 Mich. B.J. at 412.

Society has become so dependent upon state-issued photo identification that Congress recently passed a law designed to improve the reliability of such identification. *See* Real ID Act of 2005, Pub. L. 109-13, 119 Stat. 231 (2005). Among other things, the Real ID Act provides that within three (3) years, all states must enhance their security guarantees for driver's licenses to provide comprehensive standards for federal use. *See Id.* at § 202, 119 Stat. at 312. In debating the Real ID Act, Representatives recognized the importance of making driver's licenses more trustworthy because they play such a vital role in contemporary society. *See* 151 Cong. Rec. H2997-02, H3020 (May 5, 2005) ("At home, the Real ID provisions will strengthen our Nation's driver's license laws, providing each citizen with another layer of security."). In 2004, when Congress was debating a similar provision, it recognized not only how the driver's license has become the "foundation of your identity," but also how the "driver's license has come to represent more than authorization to operate a motor vehicle; it imparts a stamp of legitimacy and is often taken as unquestionable proof of identity." *See* 150 Cong. Rec. H8664-02, H8682-83 (Oct 7, 2004).

II. Federal Voter Identification Statute

On October 29, 2002, the Help America Vote Act, 42 U.S.C. 15301 et seq ("HAVA"), was enacted. HAVA applies to elections for federal office and requires certain voters to produce an acceptable type of identification in order to vote. Specifically, HAVA requires first time voters in federal elections who register to vote by mail to produce identification. 42 U.S. 15483(b)(2). Allowable pieces of identification include government issued photo identification, bank statements, utility bills, paychecks, or other documents showing the voter's current address and name. *Id.* Michigan has adopted identical requirements for individuals participating in state elections. MCL 168.509(t).

To ensure that voters are not wrongfully excluded from voting, HAVA creates a mechanism whereby state and local election officials must permit any individual whose name does not appear on the official registration list for the polling place, or whose eligibility to vote is called into question, to vote a "provisional ballot." 42 U.S.C. 15482. After the provisional ballot is placed in a provisional ballot return envelope, that provisional ballot must be delivered to the city or township clerk after the polls close in a manner as prescribed by the Michigan Secretary of State. MCL 168.523a(6). Within six days after the election, the city or township clerk must determine whether the individual voting the provisional ballot was eligible to vote by determining whether such a voter either has a valid voter registration record or that the identity and residence of the elector can be established using an acceptable means of identification. MCL 168.813(1).

The city or township clerk may count a provisional ballot after the voter presents identification demonstrating that he is properly registered and voting in the correct precinct. MCL 168.523a(5); MCL 168.813. Acceptable identification is limited to a Michigan operator's or chauffeur's license, Department of State issued personal identification card, other government issued photo identification card, photo identification card issued by an institution of higher education, junior college or community college, a current utility bill, a current bank statement, a current paycheck, a government check or other government document. MCL 168.523a(5); MCL 168.813.

Within seven days after the election, but sooner if practicable, the city or township clerk must transmit the results of provisional ballots tabulated after the election to the board of county canvassers. MCL 168.813(2). Within seven days after the election, the city or township clerk must also transmit to the county clerk a provisional ballot report for each precinct in the jurisdiction. MCL 168.813(3). That report must include for each precinct the number of

provisional ballots issued, the number of provisional ballots tabulated on election day, the number of provisional ballots forwarded to the clerk to be determined after the election, the number of provisional ballots tabulated by the clerk after election day, and any additional information concerning provisional ballots as required by the secretary of state. *Id.* The underlying message of HAVA and Michigan's Election Law is that photo identification is an acceptable tool to combat voter fraud.

III. The Bi-Partisan Baker-Carter Commission Recommends Photo Identification At The Polls

Just as government-issued photo identification has become a useful and reliable means for other government agencies and for the private sector to identify individuals, so too it will be a useful tool for identifying individual voters. Current elections security measures include the challenge process and the signature/application to vote requirement. MCL 168.733; MCL 168.523. However, the challenge procedure is typically used to verify not so much identity as residency or election procedures; and the signature/application to vote requirement requires unrealistic poll worker expertise, particularly considering the limited time and the significant pressures, to be effective. Requiring photo identification will permit poll workers to quickly check the name on the list against the name on the card and the face on the card with the face of the voter.

Recognizing the connection between obtaining a driver's license and registering to vote, the Bi-Partisan Baker-Carter Commission (the "Commission") recently recommended that states use "REAL ID" cards for purposes of identifying in-person voters. *Building Confidence in U.S. Elections*, Report of the Commission on Federal Election Reform (September, 2005) available at www.american.edu/ia/cfer/report/report.html. In recommending that election law should be

reformed to require reliable photo identification, the Commission emphasized several times that "there is no doubt that voting fraud occurs" and observed that fraud dilutes the strength of legitimate votes and thereby disenfranchises honest voters. *Id.*

The Commission recognized that requiring reliable photo identification would deter voter fraud and enable better fraud detection. *Id.* The Commission also recognized that protecting the integrity of elections by requiring voters to present photo identification would advance the independent, but equally compelling, government interest in protecting public confidence in the legitimacy of election outcomes. *Id.*

IV. Voter Fraud Exists In Michigan

House Majority Floor Leader Chris Ward has asked the Michigan Attorney General to determine whether Michigan law compels the Secretary of State and local units of government to implement and enforce the photo identification requirement in MCL 168.523. In the process of seeking this determination, Representative Ward has compiled real-life examples of voter fraud here in Michigan. Rather than repeat this analysis, Representative Ward's findings are set forth in their entirety to this Brief. *See* Appendix, the March 21, 2006 submission of Representative Ward. Nonetheless, the following portions of Representative Ward's findings bear emphasis:

1. Michigan Secretary of State Terri Lynn Land supports stronger voter identity verification standards. In her "Michigan Elections: A Plan for the 21st Century," Secretary Land, a Republican, states:

> Requiring photo identification as a means of verifying identity is a standard practice in today's world – whether you are cashing a check or boarding an airplane. Support for requiring photo identification when voting is also growing across the United States."

2. Former Detroit mayoral candidate Freeman Hendrix, a Democrat, supports photo identification, stating:

[A] picture I.D. should be required...when people go to vote.

3. Michigan Democratic Party Chair Mark Brewer recently agreed that voter fraud is rampant in Michigan. Indeed Mr. Brewer has criticized election officials for "allowing dead people to cast ballots throughout the state."

4. Representative Ward identifies 46 voters taken from the Qualified Voter File – all of whom are deceased – who voted in the 2004 Presidential election. Many of these deceased "voters" cast in-person votes, which would have been prevented if the Voter ID Law were implemented.

Even a cursory review of Representative Ward's analysis leads to one inevitable, but unfortunate conclusion: Voter fraud exists in Michigan.

V. Michigan Enacts 1996 P.A. 583 . . . But To No Avail

In an effort to prevent voter fraud, 1996 P.A. 583 was enacted. 1996 P.A. 583 amended MCL 168.523 to read in pertinent part as follows:

> At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card .... If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act.

1996 P.A. 583 was signed by the Governor on January 16, 1997. 1997 Journal of the House 2664. Thirteen days later, the Michigan Attorney General opined that MCL 168.523, as amended by 1996 P.A. 583, violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. See OAG, 1997-1998, No 6930, p 1 (January 29, 1997) ("OAG 6930"). To date, OAG 6930 has effectively blocked the implementation of the Voter ID Law.

VI. Michigan Enacts 2005 P.A. 71 . . . And Hope Renews

In 2005 P.A. 71, the Michigan Legislature amended MCL 168.523 by adding digitized signature requirements. 2005 P.A. 71 also re-enacted the voter identification requirements in MCL 168.523 that the Michigan Attorney General previously declared violative of the United States Constitution in OAG 6930. Significantly, if this Court upholds the constitutionality of the Voter ID Law, then the people of the State of Michigan will receive a valuable tool to help prevent voter fraud which has been wrongfully denied to them since the creation of OAG 6930.

STANDARD OF REVIEW

I. *De Novo* Review

Questions involving the constitutionality of a statutory provision are reviewed *de novo*. *See, e.g. DeRose v. DeRose*, 469 Mich. 320, 326; 666 N.W.2d 636 (2003).

II. Facial Constitution Challenges

Moreover, this case requires the analysis of the facial constitutionality of the voter identification requirements of Section 523 of 2005 P.A. 71. This is not an "as applied" challenge to the constitutionality of that statute as applied to constitutionally protected conduct. The party challenging the facial constitutionality of an act "'must establish that no set of circumstances exists under which the [a]ct would be valid. The fact that the [a]ct might operate unconstitutionally under some conceivable set of circumstances is insufficient... .' " *Council of Orgs, Others For Ed. About Parochiad, Inc. v. Governor*, 455 Mich. 557, 568; 566 NW 2d 208 (1997), *quoting United States v. Salerno*, 481 U.S. 739, 745; 107 S. Ct. 2095; 95 L. Ed.2d 697 (1987); *see also Straus v. Governor*, 459 Mich. 526, 543; 592 N.W.2d 53 (1999), quoting *Salerno, supra.*

This Court must, therefore, presume the voter identification requirements of Section 523 of 2005 P.A. 71. to be constitutional unless their unconstitutionality is clearly apparent. *Rose v Stokely*, 258 Mich. App. 283, 305; 673 N.W.2d 413 (2003). It is not this Court's proper function to test the operation of the voter identification requirements of Section 523 of 2005 P.A. 71 by contriving a conceivable set of circumstances, or to address the constitutional question in the abstract. *Id.* at 306. Instead, this Court must recognize that, although Section 523 of 2005 P.A. 71 is facially constitutional, MCL 168.523 might operate unconstitutionally under some conceivable set of circumstances. *Id.* at 306.

ARGUMENT

THE PHOTO IDENTIFICATION REQUIREMENTS OF MCL 168.523 DO NOT, ON THEIR FACE, VIOLATE EITHER THE MICHIGAN CONSTITUTION OR THE UNITED STATES CONSTITUTION.

I. 2005 P.A. 71 Is Presumed Constitutional

In 2005, the Legislature passed and the Governor signed Senate Bill 513, which amended MCL 168.523. Interestingly, however, in re-enacting the statute in 2005, Senate Bill 513 did not amend or rescind the language deemed unconstitutional by OAG 6930. A statute is presumed constitutional, and "the burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it," *Heller v. Doe*, 509 U.S. 312; 113 S. Ct. 2637; 125 L. Ed.2d 257 (1993), quoting *Lehnhausen v. Lake Shore Auto Parts Co*, 410 U.S. 356, 364; 93 S. Ct. 1001; 35 L. Ed. 2d 351 (1973). It is presumed that the Legislature would not intend to pass an act in contravention of a constitutional restriction. *See, e.g., State Bar of Michigan v. City of Lansing*, 361 Mich. 185; 105 N.W.2d 131 (1960). Furthermore, statutes are presumed constitutional, and the court must "exercise the power to declare a law unconstitutional with extreme caution." *Phillips v. Mirac Inc.*, 470 Mich. 415, 422; 685 N.W.2d 174 (2004) (stating that "[e]very

reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity.").

2005 P.A. 71 is a newly enacted law, effective July 14, 2005. Absent a court finding, MCL 168.523(1), as amended by 2005 P.A. 71, is presumed constitutional.

It is well known that "the Legislature is presumed to be aware of longstanding judicial and administrative interpretations" of statutes. *Van Buren T'wp. v. Garter Belt Inc.*, 258 Mich. App. 594, 606-07; 673 N.W.2d 111 (2003). The Legislature is, therefore, presumed to have known when re-enacting MCL 168.523, that the Attorney General gave his opinion in OAG 6930 that the voter identification requirements in MCL 168.523 are unconstitutional. That canon of statutory construction compels the conclusion that, by re-enacting the same statutory language, the Legislature and Governor clearly believe that the voter identification requirements are constitutional.

II. The Voter ID Law Is Expressly Authorized By Article I, Section 4, Clause 1 Of The United States Constitution

Article I, Section 4 of the United States Constitution provides the States with the power to determine the "Times, Places and Manner of holding Elections for Senators and Representatives," subject to congressional oversight. U.S. Const., Art. I, § 4. This authority, known as the Elections Clause, extends to elections of State offices as well. *See Tashjian v. Republican Party of Conn,* 479 U.S. 208, 217; 107 S. Ct. 544; 93 L. Ed.2d 514 (1986). The Elections Clause, in conjunction with Article I, Section 1, and Article II, Section 2, is the font of the judicially recognized right to vote, a right later reinforced by Amendments I, XIV, XV, XVII, XIX, XXIV, and XXVI.

The Constitution itself plainly "compels the conclusion that government must play an active role in structuring elections;" because "as a particular matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Burdick v. Takushi*, 504 U.S. 428, 433; 112 S. Ct. 2059; 119 L. Ed.2d 245 (1992) (quoting *Storer v. Brown*, 415 U.S. 724, 730; 94 S. Ct. 1274, 39 L. Ed.2d 714 (1974)); *Tashjian*, 479 U.S. at 217; see also *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358; 117 S. Ct. 1364; 137 L. Ed.2d 589 (1997) (holding that "States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and-campaign-related disorder."). Pursuant to the Elections Clause, "state legislatures may, without transgressing the Constitution, impose extensive restrictions on voting." *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004).

The Voter ID Law represents a basic exercise of Elections Clause authority. It is a law that is fundamentally different from voter qualifications laws, such as age and residency requirements. It does not establish any criteria or barrier to voting; it is simply an enforcement method for insuring that the eligibility criteria for voting that do exist (such as age and residency) are honored. Although the proponents of voter fraud may argue that the Voter ID Law treats absentee voters differently than in-person voters, requiring identification at the polls merely reflects a different type of voting procedure. Taking such arguments of the proponents of voter fraud to their logical conclusion, offering the absentee voting option itself becomes an equal protection violation! Rather than limit the franchise to a certain subset of the population, the Voter ID Law protects the franchise by insuring that those who meet substantive eligibility requirements have their votes counted without being diluted by ineligible voters. Questions on how best to enforce legitimate

criteria are legislative policy questions and are not subject to judicial second-guessing or invalidation.

III. The Analysis in OAG 6930 Should Be Rejected By This Court.

A. OAG 6930 Incorrectly Applied The Strict Scrutiny Standard

In OAG 6930, the Michigan Attorney General reviewed the Voter ID Law in the "context of a strict constitutional scrutiny analysis." OAG 6930 at p. 3. Under this standard, a law is unconstitutional unless the State can demonstrate that the law is "necessary" to promote a "compelling" governmental interest, and that the law is "narrowly tailored." *See e.g.*, *Dunn v. Blumstein*, 405 U.S. 330, 336; 92 S. Ct. 995; 31 L. Ed.2d 274 (1972). Laws rarely withstand strict scrutiny, and thus it is hardly surprising that the Michigan Attorney General concludes that the Voter ID Law does not.

However, OAG 6930 relies on the "erroneous assumption that a law that imposes any burden upon the right to vote must be subject to strict scrutiny." *See Burdick, supra* at 432. As the United States Supreme Court explained in *Burdick*:

> Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects at least to some degree the individual's right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently.

Id. at 433. Similarly, strict scrutiny of an election law is not warranted merely because it may prevent some otherwise eligible voters from exercising that right. As the Seventh Circuit observed: "Any [election] restriction is going to exclude, either de jure or de facto, some people

from voting; the constitutional question is whether the restriction and resulting exclusion are reasonable given the interest the restriction serves." *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004) (*citing Timmons, supra* at 358-59; *Nader v. Keith*, 385 F.3d 729 (7th Cir. 2004); *Libertarian Party v. Rednour*, 108 F.3d 768, 773 (7th Cir. 1997); *Weime v. Merrill*, 84 F.3d 479, 483-84 (1st Cir. 1996)).[1] Furthermore, the Court has stated that "the mere fact that a voting regulation excludes some voters is not enough to warrant strict scrutiny." *Griffin*, 385 F.3d at 1130.

The United States Supreme Court has eschewed a hard-and-fast rule to categorize between rational basis and strict scrutiny for purposes of testing the validity of election regulations and instead has adopted a flexible framework. *See Burdick*, 112 S. Ct. at 2063; *Anderson*, 103 S. Ct. 1564; *Storer v Brown*, 415 U.S. 724, 730; 94 S. Ct. 1274, 39 L. Ed.2d 714 (1974). Under the prescribed framework, the level of scrutiny to be applied corresponds to the degree to which a challenged regulation encumbers First and Fourteenth Amendment rights. Consequently, a court weighing a challenge to a state election law must start by assessing "the character and magnitude of the asserted injury" to the plaintiff's constitutionally protected rights and then "evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule."

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[1] On July 14, 2006, the United States District Court for the Northern District of Georgia granted plaintiff's Motion for Preliminary Injunction enjoining the enforcement or application of Georgia's photo identification statute for the primary election. *Common Cause v. Georgia Superintendent of Elections*, 4:05-CV-0201-HLM. In that case, the Court determined that, although identification cards were free to all Georgia residents, Georgia's voter identification requirement created an undue burden on voters because, with only two weeks before the Georgia primary elections, more than 600,000 registered voters still lacked identification required by Georgia law. In other words, the crux of the holding was not that requiring voters to submit identification is unconstitutional, but that because the large number of voters without identification cards were left with such a short time before the election, the voter identification requirement constituted an undue burden to those voters. The instant case is significantly different because Michigan law permits voters without identification to cast a vote by simply completing an affidavit of identification. Accordingly, because a failsafe allows voters to cast votes by completing the affidavit of identification, there is no analogous burden on Michigan voters to rush to obtain identification before voting.

Anderson, 460 U.S. at 789; *accord Libertarian Party of Me v. Diamond*, 992 F.2d 365, 370 (1st Cir. 1993) (explaining that the court must attempt to achieve a sort of "constitutional equilibrium"). In this process the court must take into account, among other things, "the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.* The *Burdick* Court crystallized the applicable standard of inquiry, stating that:

> Under this standard, the rigorousness of [the] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subject to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance. But when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions.

Burdick, 112 S. Ct. at 2063-64 (citations and internal quotation marks omitted).

In *Roupas*, a group of working mothers sued the Illinois State Board of Elections, alleging that the United States Constitution required Illinois to allow plaintiffs to vote by absentee ballot. The plaintiffs contended that, because it was a hardship for them to vote in person, they should be permitted to vote absentee.[2] The Seventh Circuit upheld the lower court in finding that, the striking of a balance between discouraging fraud and encouraging voter turnout was a legislative judgment with which the court would not interfere unless strongly convinced that such judgment was grossly awry. In so holding, the Court found that the Illinois absentee voter statute did not deny plaintiffs' equal protection of the laws because the hardships that prevented voting in person did not bear more heavily on working mothers than other classes in the community.

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[2] Illinois law allows absentee voting only if the voter either expects to be absent from the county on election day or is unable to vote in person because of physical incapacity, religious observance, residing outside the precinct for college, or having to perform specified official duties—election judge in another precinct, other election duties or serving as a sequestered juror.

Similarly, the Voter ID Law's requirement that voters either present identification or submit an affidavit or identity does not bear more heavily on working mothers than other classes and the community and, therefore, does not necessitate strict scrutiny.

In *Burdick*, a registered voter sued the Hawaii Director of Elections claiming that the State of Hawaii's prohibition against write-in votes violates the First and Fourteenth Amendments to the United States Constitution. Hawaii's election law requires candidates to participate in primary elections to obtain a position on the general election ballot. The Court found that the state's legitimate interests outweighed the limited burden that the write-in voting ban imposed upon state voters. The Court stated that "the mere fact that a State's system 'creates barriers...does not of itself compel close scrutiny." *Burdick, supra* at 433-434 (Citing *Bullock v. Carter,* 405 U.S. 134, 143; 92 S. Ct. 849; 31 L. Ed.2d 92 (1972); *Anderson, supra* at 788; *McDonald v. Bd. of Election Comm'rs. of Chicago*, 394 U.S. 802; 89 S. Ct. 1404; 22 L. Ed. 2d 739, (1969)). The Court determined that:

> [i]nstead...a more flexible standard applies. A court considering a challenge to a state election law must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Anderson, 460 U.S. at 789; *Tashjian, supra*, at 213-214. Ultimately, the Court determined that the restrictions in the election law imposed only reasonable, nondiscriminatory restrictions upon voters' rights. Similarly, in this case, the State of Michigan's reasonable and nondiscriminatory requirement that voters either submit identification or complete an affidavit of identification does not offend the rights of voters that are guaranteed by the First and Fourteenth Amendment.

In *Werme*, the Libertarian Party sued state election officials seeking to permit members of the Libertarian Party to be appointed as election inspectors and ballot clerks, contending that the state's statute limiting appointments of elections inspectors to those appointed by the two political parties that received the largest number of votes cast for governor in the previous general election was unconstitutional. In rejecting the Libertarian party members' claims, the court held the state's regulations were nondiscriminatory because the regulations did not differentiate among political parties and the right to appoint inspectors was based on the degree of success at the polls. The court held that the state's interest in the efficient management of elections justified the restrictions on appellant's rights. The crux of the ruling was that the statute was nondiscriminatory in that it does not differentiate among parties. Instead, the regulation conditions the right to appoint election inspectors and ballot clerks on a certain degree of success at the polls. Similarly, in this case, the Voter ID Law is nondiscriminatory in that it does not differentiate between parties. The Voter ID Law instead conditions the right to vote on presentation of identification or completion of an affidavit of identification. Both conditions on voting, because they are nondiscriminatory and do not differentiate between parties, require only rational basis analysis.

The underlying theme of the election law cases in which state legislatures impose limitations related to voting rights is that, as long as the state legislature does not distinguish between groups of people and has a legitimate regulatory basis for the voting restriction, strict scrutiny does not apply.[3] Based upon applicable precedent, because the Michigan Legislature had

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[3] In a pending case with similar facts, the United States District Court in the Southern District of Indiana recently granted summary judgment in favor of the State of Indiana in a lawsuit by the Indiana Democratic Party seeking to enjoin Indiana's implementation of its voter identification statute. In that case, the Court applied a rational basis analysis to the Indiana law's and determined that the Indiana Legislature had a rational basis for the voter identification statute, namely preventing voter fraud. *Indiana Democratic Party, et al v Todd Rokita, et al.*, No. 1:05-

a legitimate regulatory basis for the voter identification statute—namely, preventing voter fraud—and because MCL 168.523 does not distinguish between groups—all citizens must present identification or complete an affidavit of identification—strict scrutiny does not apply in this case.

B. Evidence Of Voter Fraud

In OAG 6930, the Michigan Attorney General concludes that the Voter ID Law "is simply not necessary to promote a compelling governmental interest," because:

> [A]s the chief law enforcement official of the state of Michigan, I am not aware of any substantial voter fraud in Michigan's elections. I have not received any complaints regarding voter fraud. Moreover, the state's chief elections official, Secretary of State Candice Miller, confirmed the fact that Michigan does not have a voter fraud problem when she stated: "We have no real evidence of voter fraud in Michigan. Michigan has historically had very clean elections."

OAG 6930 at p. 3. The Michigan Attorney General is certainly entitled to his opinion, but this apparent belief that the Michigan Attorney General, "as the chief law enforcement official of the State of Michigan," gets to determine whether Michigan's voter fraud problem is sufficiently grave as to require enactment of additional safeguards in the form of the Voter ID Law, ignores fundamental rules of constitutional law. Simply put, that determination is not the Attorney General's to make; it is up to the Legislature.

Moreover, the Michigan Legislature is not required to produce any such documentation of voter fraud prior to enactment of a law. The Supreme Court has stressed that there is no requirement of "elaborate, empirical verification of the weightiness of the State's asserted justifications." *Timmons* 520 U.S. at 364 (1997); *See also Munro,* 479 U.S. at 195-196 (1986) (noting: "Legislatures ... should be permitted to respond to potential deficiencies in the

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CV-0634-SEB-VSS (S.D. Ind. April 14, 2006). The Indiana Democratic Party filed its Notice of Appeal to the 7th Circuit on May 5, 2006.

electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights").

Assuming for the sake of argument that Michigan is required to substantiate its justification for the Voter ID Law, the fact that voter fraud exists in Michigan cannot seriously be disputed. Again, we refer the Court to Representative Chris Ward's compilation of real-life examples of voter fraud here in Michigan. See Appendix.

Accordingly, the Michigan Attorney General's reliance on the lack of voter fraud in OAG 6930: (1) represents an unconstitutional usurpation of decision making authority that is not the Attorney General's to make; (2) imposes a requirement that Legislatures must produce documentation of voter fraud prior to enactment of the Voter ID Law that the Supreme Court indicates is not required; and (3) is contrary to the fact that voter fraud exists in Michigan.

C. The Voter ID Law Is Not A Poll Tax

In OAG 6930, the Michigan Attorney General appears to equate the Voter ID Law with a poll tax by indicating that the "United States Supreme Court has rejected attempts to burden the fundamental right to vote by requiring payment of a fee." OAG 6930 at p. 2. According to Supreme Court precedent, "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax." *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 666; 86 S. Ct. 1079; 16 L. Ed.2d 169 (1966). In making this comparison, perhaps the Michigan Attorney General implied that all manner of incidental costs incurred in the process of obtaining the photo identification required by the Voter ID Law may constitute a poll tax.

Such an argument represents a dramatic overstatement of what fairly constitutes a "poll tax." It is beyond dispute that "election laws will invariably impose some burden upon individual voters." *Burdick,* 504 U.S. at 433. Thus, the imposition of tangential burdens does not transform a regulation into a poll tax. Moreover, the cost of time and transportation to obtain photo identification cannot plausibly qualify as a prohibited poll tax because the same "costs" also result from voter registration and in-person voting requirements, which one would not reasonably construe as a poll tax. Moreover, the Voter ID Law specifically allows a voter to sign an affidavit in the event photo identification is not presented. Therefore, any implication in OAG 6930 that the Voter ID is a poll tax defies reason.

D. The Michigan Supreme Court Has Not Adopted A General Rule Which Applies Strict Constitutional Scrutiny To Restrictions On The Fundamental Right To Vote

In OAG 6930, the Michigan Attorney General stated:

> "Our Supreme Court also applies strict constitutional scrutiny to restrictions on the fundamental right to vote. In *Michigan State UAW Community Action Program Counsel v Secretary of State*, 387 Mich 506, 517; 198 NW 2d 385 (1972), the court rejected a statutory provision allegedly designed to prevent voter fraud by removing otherwise qualified citizens from the registration rolls if they had not voted or otherwise reactivated their registration within two years. In doing so, the court held that "[t]he State has the burden of demonstrating that the particular regulation is necessary and is essential and not achievable by any less drastic means."

OAG 6930 at p. 2. However, any reasonable reading of *Michigan State UAW* indicates that the Michigan Supreme Court in that case took its direction from the United States Supreme Court, and cited and discussed almost exclusively federal right-to-vote cases:

> M.C.L.A. § 168.509; M.S.A. § 6.1509, by removing otherwise qualified citizens from the voter rolls clearly affects the right to vote . . . . The United States Supreme Court has held in numerous recent decisions involving the right to vote that in order that a State law prevail which

> impedes this fundamental constitutional right, there must be demonstrated a compelling state interest. *Williams v. Rhodes*, 393 U.S. 23 (1968); *Kramer v. Union Free School Dist.*, 395 U.S. 621 (1969); *Cipriano v. Houma*, 395 U.S. 701 (1969); *Evans v. Cornman*, 398 U.S. 419 (1970); and *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). Our Court has recently applied this standard in *Wilkins v. Ann Arbor City Clerk*, 385 Mich. 670, 189 N.W.2d 423 (1971), a case involving the voting rights of students. Thus, in order to uphold M.C.L.A. § 168.509; M.S.A. § 6.1509, we must determine whether there is demonstrated a compelling state interest.

Michigan State UAW, 387 Mich at 514. Similarly, in stating that "[a]ny burden, however small" must withstand strict scrutiny, the Court also relied almost wholly on federal case law: The Court cited *Lane v. Wilson*, 307 U.S. 268 (1939), and *Williams, supra*; again, *Wilkins v. Ann Arbor City Clerk* was the only state court citation. 387 Mich. at 516. In *Wilkins*, moreover, the Michigan Supreme Court relied *exclusively* on United States Supreme Court decisions to invalidate a statute (that barred out-of-state students residing in Michigan from voting) under the federal and state equal protection clauses. See *Wilkins*, 385 Mich. at 679-91. Thus, *Michigan State UAW*'s invocation of strict scrutiny to evaluate a right-to-vote claim under Art. 2 § 1 of the State Constitution – and its rejection of a more "flexible" standard – were based not on principles of state constitutional law, but rather on the Court's apparent belief that the rights to vote conferred by the federal and Art. 2, § 1 are coterminous.

The same is true of the Michigan Supreme Court's decision in *Socialist Workers Party v. Secretary of State*, 412 Mich. 571; 317 N.W.2d 1 (1982). In that case, the Court first held that a Michigan ballot access statute "impose[d] both unreasonable and unnecessary restrictions on access to the general election ballot," and therefore violated the First and Fourteenth Amendments of the U.S. Constitution. *Id.* at 587. That holding, of course, relied on U.S. Supreme Court decisions construing the federal right to vote. In addition to their federal right-to-vote claim, the plaintiffs in that case had brought a claim based on the equal protection clause of the Michigan

Constitution. The Court accepted that claim, but did so in complete reliance on its earlier disposition of the federal claim:

> Plaintiffs also argue 1976 P.A 94 violates the Michigan equal protection clause, Const. 1963, Art. 1, § 2. We agree and so hold, for the reasons stated in section III, *supra*.

412 Mich. at 600. *Socialist Workers Party* thus provides another strong indication that the Michigan Supreme Court views the state right to vote as identical in scope to the federal right to vote.

Therefore, since the United States Supreme Court does not automatically apply strict constitutional scrutiny to voting restrictions, and the case relied upon in OAG 6930 merely followed federal precedent, the Michigan Attorney General's representation as to the application by this Court of strict constitutional scrutiny is inaccurate.

E. OAG 6930 Ignores The Affidavit Of Identify Component Of The Voter ID Law.

In OAG 6930, the Attorney General considered the "magnitude of the burden imposed by this picture identification requirement for voting" as follows:

> For the poor, those who do not drive, especially the elderly, the handicapped and those who, for whatever reason, do not possess a picture identification card, this requirement imposes economic and logistical burdens.

OAG 6930 at p. 3. Significantly, the Attorney General never explains why, in his view, the affidavit alternative of the Voter ID Law does not remove whatever burden might be imposed by the identification card requirement. Since signing an affidavit arguably imposes no cognizable burden at all, it is difficult to defend the Attorney General's lack of analysis in OAG 6930, which completely ignored the affidavit alternative.

F. OAG 6930 Should Be Rejected

As indicated above, the legal analysis of OAG 6930 is seriously flawed. Thankfully, this Court is not bound by OAG 6930. *See, e.g., Reinelt v. Michigan Public School Employees' Retirement Board*, 87 Mich. App. 769, 774; 276 N.W.2d 858 (1979); *Indenbaum v Mich Dept of Licensing and Regulation*, 213 Mich App 263, 274; 539 NW2d 574 (1995) (holding that Attorney General opinions are not binding); *Macomb Co Prosecutor v Murphy*, 233 Mich App 372, 382; 592 NW2d 745 (1999) ("An opinion of the Attorney General, while not precedentially binding, can be persuasive authority."). Therefore, this Court should expressly reject OAG 6930 in any decision referenced in this matter.

IV. Under The Correct Legal Standard, The Voter ID Law Does Not Violate The United States Constitution

Having determined that strict scrutiny is not warranted, "the constitutional question is whether the restriction and resulting exclusion are reasonable given the interest the restriction serves." *Griffin v Roupas*, 385 F3d 1128, 1130 (7th Cir 2004). In the present situation, Michigan has a recognized interest in ascertaining a voter's identity and discouraging voter fraud which interest fully justifies the Voter ID Law.

It is beyond dispute that Michigan has a compelling interest in ascertaining an individual's identity allowing the person to vote. It is also well-established that Michigan has an important interest in preventing voter fraud. As the United States Supreme Court has observed:

> It cannot be doubted that these comprehensive words [of Article I §4] embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to . . . **prevention of fraud and corrupt practices** . . . to enact the numerous requirements as to procedure and safeguards which experience shows as necessary in order to enforce the fundamental right involved.

Smiley v Holm, 285 US 355, 366; 52 S Ct. 397, 76 L Ed. 795 (1932) (emphasis added). Moreover, in examining an election regulation aimed at combating fraud, courts should pay additional deference to the legislative judgment because "the striking of the balance between discouraging fraud and other abuses and encouraging turnout is quintessentially a legislative judgment with which we judges should not interfere unless strongly convinced that the legislative judgment is grossly awry." *Griffin*, 385 F3d at 1131.

The Michigan Legislature was clearly concerned with avoiding the dilution of properly cast votes by votes that were fraudulently cast by imposters. As the United States Supreme Court stated in *Reynolds v. Sims*, 377 U.S. 533, 555; 84 S Ct. 1362; 12 L Ed 2d 506 (1964), "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." In *Reynolds*, the Court considered whether the State of Alabama's reapportionment plan had the effect of diluting votes. The *Reynolds* court struck down the challenged reapportionment plan finding that protecting the right to vote also includes ensuring that votes properly cast are not diluted by fraudulent votes. Here, where perpetrators are freely allowed to vote without being required to show identification, the potential for fraud and, therefore, dilution of votes is ever-present. Similar to the *Reynolds* case, by failing to verify the identification of voters, the State of Michigan in effect enables the dilution of votes in violation of the Equal Protection Clause of the United States Constitution. Accordingly, the Michigan Legislature has an interest in ensuring that Michigan citizens are not in effect denied their right to vote because fraudulent votes are cast.

It is significant to note that the Voter ID Law does not impose substantive voting criteria; rather, it protects legitimate voters by enforcing substantive criteria that already exist. "No right is more precious in a free country than that of having a voice in the election of those who make the

laws under which, as good citizens, we must live." *Wesberry v. Sanders*, 376 U.S. 1, 17; 84 S. Ct. 526, 11 L. Ed.2d 481 (1964). It is equally critical to understand, however that the right to vote is simply not the right to cast a ballot, but also the right to have one's vote counted. *US v. Saylor*, 322 U.S. 385, 387; 64 S. Ct. 1101, 88 L. Ed. 1341 (1994). To protect that right, states must undertake reasonable efforts to ensure that those who cast ballots are actually entitled to do so. Without such safeguards, the right to vote, and to have one's vote counted, would become increasingly diluted amidst a pool of fraudulent ballots. *Id.* To combat this legitimate interest, the Voter ID Law requires that in-person voters present a form of photo identification that virtually all registered voters already possess. As referenced earlier in this Brief, presentation of photo identification is routinely required for a multitude of everyday activities – from boarding a plane, entering a government building, to cashing a check. Among all of the possible ways to identify individuals, government-issued photo identification is a reasonable means to prevent voter fraud.

After identifying a legitimate governmental purpose, another aspect of rational basis scrutiny asks whether a rational basis exists for the enacting governmental body to believe that the legislation would further the hypothesized purpose. *Ga. Manufactured Hous. Ass'n. v. Spalding County*, 148 F.3d 1304, 1307 (11th Cir. 1998). As long as reasons for the legislative classification may have been considered to be true, and the relationship between the classification and the goal is not so attenuated as to render the distinction arbitrary or irrational, the legislation survives the rational basis scrutiny. *Joel v. City of Orlando*, 232 F.3d 1353, 1358 (11th Cir. 2000) (*citing Haves v. City of Miami*, 52 F.3d 918, 921-22 (11th Cir. 1995)). In this case, the Legislature has a rational basis to believe that the requirements in MCL 168.523 that voters submit government issued photo identification cards will have the affect of limiting voter fraud because it take a necessary step

toward preserving the integrity of the electoral process and preventing individuals from falsely and fraudulently claiming to be registered voters.

It is also important to note that, for purposes of the rational basis standard of review under the Equal Protection Clause, the rule need not be the least restrictive means of achieving a permissible end, and so long as the state could rationally have decided that its action would further its goal, the Equal Protection Clause is satisfied. *Minn. v. Clover Leaf Creamery Co.*, 449 U.S. 456; 101 S. Ct. 715; 66 L. Ed.2d 659 (1981). The rational basis review requires only that the classification be rational, but does not require that it be the most fair or best means the Legislature could have used. *Robinson v. Marshall*, 66 F.3d 249 (9th Cir. 1995); *Seeley v State*, 132 Wash.2d 776; 940 P.2d 604 (1997). Parties challenging legislation under the Equal Protection Clause cannot prevail so long as it is evident from all the considerations presented to the Legislature, and those of which the court may take judicial notice, that the question is at least debatable. *Western & Southern Life Ins Co. v. State Bd. of Equalization of California*, 451 U.S. 648; 101 S. Ct. 2070; 68 L. Ed.2d 514 (1981).

Accordingly, the State of Michigan's "important regulatory interest" in combating voter fraud is sufficient to justify the "reasonable, nondiscriminatory restrictions" contained in MCL 168.523. *See Timmons*, 520 U.S. at 358 59. The United States Supreme Court has stressed that there is no requirement of "elaborate, empirical verification of the weightiness of the State's asserted justifications." *Id.*; *See also Munro, supra* ("Legislatures...should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights"). Therefore, under the under correct legal standard of rational basis scrutiny, the Voter ID Law does not violate the United States Constitution.

V. The Voter ID Law Does Not Violate The Michigan Constitution

According to Article II, Section 1 of the Michigan Constitution:

> Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes.

The Voter ID Law does not violate this constitutional provision because it does not impose substantive voting criteria; rather, it protects legitimate voters by enforcing substantive criteria that already exists. If this were not the case, then many commonly accepted elections regulations that may exclude some otherwise legitimate voters would be impermissible. For example, requiring voters to register in advance of elections helps to prevent fraud, but it also undoubtedly excludes otherwise qualified and willing voters who forget to register or do not have access to voter registration personnel. Similarly, requiring voters to vote in public at a specified polling place acts as, among other things, a means to prevent fraud. Yet, there may well be a class of people who do not qualify to vote absentee but for whom the burden of getting to the polls to vote is simply too much. Even the fundamental requirement that voters identify themselves to clerks at the polling place, yet another piece of the fraud-prevention puzzle, may offend some legitimate registered voters and drive them away from voting. While it is unfortunate when any legitimate voter does not exercise the right to vote, not every failure to vote results in a constitutional violation.

There can be no serious dispute with advance registration, polling-place voting requirements, or self-identification at the polls. Requiring voters to prove identity with commonly possessed documentation is no different. *See League of Women Voters v. Blackwell*, 340 F. Supp.2d 823, 828-29 (N.D. Ohio 2004) (upholding requirement that first-time voters who

registered by mail provide acceptable proof of identity even though some voters may be disenfranchised); *see also McKay v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000) (upholding Tennessee statute requiring disclosure of Social Security number as condition for voter registration); *Greidinger v. Davis*, 988 F.2d 1344, 1352-55 (4th Cir. 1993) (holding that state may require voters to reveal their Social Security numbers though it may not publicly disclose such numbers).

Nonetheless, the proponents of voter fraud may point to *Michigan State UAW Community Action Program Council v. Austin*, 387 Mich. 506; 198 N.W.2d 385 (1972), which was cited in OAG 6930 as support to invalidate the Voter ID Law. In *Michigan State UAW*, the plaintiffs challenged a state statute (MCL 168.509) which provided for the suspension of the registration of all electors who had not "voted, continued their registration, reinstated their registration, or recorded a change in address on their registration within a period of 2 years." 387 Mich. at 512. The plaintiffs alleged that the statute violated Art. 2, § 1 of the Michigan Constitution, as well as the due process and equal protection clauses of both the federal and state constitutions. The Michigan Supreme Court held the statute unconstitutional under Art. 2, § 1, and therefore did not reach the plaintiff's due process and equal protection arguments. 387 Mich. at 520.

As indicated earlier in Section III.D. of the Argument section of this Brief, the constitutional analysis undertaken by the Michigan Supreme Court has historically treated the state and federal right to vote as essentially coterminous. Consequently, because the Voter ID Law does not violate the United States Constitution, as indicated earlier in this Brief, it similarly does not violate Article II, Section 1 of the Michigan Constitution.

Moreover, the Michigan Constitution provides the Michigan Legislature considerably more latitude to enact election laws than does the Elections Clause of the United States Constitution. According to Article II, Section 4 of the Michigan Constitution:

> The legislature shall enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames.

In other words, while both the United States and Michigan Constitution authorize the Michigan Legislature to enact laws to regulate the "time, place and manner of elections", the Michigan Constitution also requires the Legislature to "enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting." Pursuant to the rule of "common understanding" of interpreting a constitutional provision, the addition of this second sentence of Article II, Section 4 of the Michigan Constitution must necessarily give the Michigan Legislature considerably more latitude to enact election laws than does the Elections Clause of the United States Constitution. See *Wayne County v. Hathcock*, 471 Mich. 445, 468; 684 N.W.2d 765 (2004). Therefore, since the Voter ID Law does not violate the United States Constitution, it certainly does not violate the Michigan Constitution.

CONCLUSION AND RELIEF REQUESTED

Amicus Curiae Michigan Republican Party respectfully requests that this Court issue an advisory opinion that the photo identification requirements of Section 523 of 2005 P.A. 71 do not,

on their face, violate either the Michigan Constitution or the United States Constitution. In rendering this decision, the Michigan Republican Party also respectfully requests that this Court expressly reject OAG 6930, which has successfully blocked implementation of the Voter ID Law.

Because of the nature of these proceedings and the voluminous briefs that this Court will receive concerning the Voter ID Law, oral argument is not necessary in this matter. However, in the event that this Court does allow oral argument in this matter, the Michigan Republican Party respectfully requests the opportunity to present oral argument, as reflected on the cover page of this Brief.

If this Court determines that the Voter ID Law does not violate the United States or Michigan Constitution, the Michigan Secretary of State and local clerks must implement the law for the general election on November 7, 2006. Accordingly, Amicus Curiae Michigan Republican Party respectfully requests that this Court make its determination based on the written submissions by the parties and without oral arguments in order to issue its opinion before September 2006.

Respectfully submitted,

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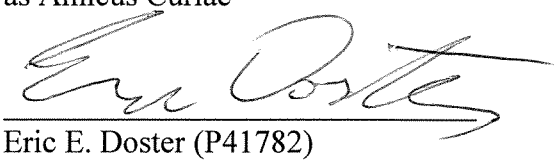
Dated: July 19, 2006

By: 

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